

NO. 21,912

IN THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

ALI ASGHAR ASGHARI,

Petitioner,

v.

IMMIGRATION AND NATURALIZATION
SERVICE,

Respondent.

BRIEF FOR RESPONDENT

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INDEX

	<u>Page</u>
JURISDICTION	1
STATEMENT OF THE CASE	2
STATUTE	3
THE ISSUE	3
ARGUMENT	3
CERTIFICATE	6

AUTHORITIES CITED

		<u>Page</u>
<u>Immigration and Nationality Act of 1952</u>		
§106	8 USC 1105a	1
§243(h)	8 USC 1253(h)	1, 2, 3

CASES

FOTI v. INS, 375 US 217	1
SCHIEBER v. INS, 347 F.2d 357	4

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JURISDICTION

Deportability on the charges in the Order to Show Cause is conceded. (Petitioner's Brief, p. 2.) He seeks review of denial of discretionary relief sought through §243(h) of the Act (8 USC 1253(h)). This Court has jurisdiction by §106 of the Act (8 USC 1105a).

Foti v. INS
375 US 217

STATEMENT OF THE CASE

Petitioner's statement is correct.

Respondent adds the following:

Petitioner was admitted as a temporary visitor on December 10, 1960. Upon application his status was changed to that of a student and he was granted extension to March 15, 1965. He remained thereafter (R., p. 30). When he obtained the visitor's visa from the American Consul in Iran, he knew he would not be able to get a student's visa. He told the Consul he was coming as a visitor for three to six months, although he intended to stay six years (R., p. 31). After receiving the extension to March 15, 1965 on his student status, he was given a further extension to April 6, 1965 to depart. Instead of departing, he went to New York without informing the respondent of his change of address and without leaving a forwarding address with his landlady. He was apprehended June 16, 1966 (R., p. 3). His §243(h) claim

of persecution is founded on fear caused only by his activities since coming to the United States, by joining the Iranian Student Association (R., p. 3.)

It is also to be noted that about four or five months after respondent arrived, he obtained employment, without first getting permission to do so from respondent. On February 17, 1964 and on February 15, 1965, when he applied for extension of status, he falsely stated he had not been employed and that his means of support was money from his uncle (R., p. 31.)

STATUTE

Section 243(h) (8 USC 1253(h)) is quoted in petitioner's brief.

THE ISSUE

Was petitioner accorded a fair hearing and due process on his application for discretionary relief.

ARGUMENT

The record fully supports the decision of the Special Inquiry Officer (R., pp 30-34) and the

order of the Board of Immigration Appeals dismissing the appeal (R., pp 1-5). Petitioner was accorded a full and fair opportunity to present whatever evidence he had to support his claim^o to persecution. There has been no abuse of discretion. The most recent case in this Circuit has been cited by petitioner, Schieber v. INS, 347 F.2d 357. There, as here, respondent submits the record amply supports the refusal of the Attorney General to withhold deportation.

Petitioner in his brief (p. 6) says his burden is heavy: "It is not easy for an individual in the United States to procure evidence of persecution in a foreign country.", to which might be added -- having come as a visitor for a short stay; having succeeded in changing his status to that of a student; having obtained extensions by concealing the fact that he had obtained employment without permission; then moving to New York without giving a change of address, so that it was a year before he was apprehended, and finally, entering into an association

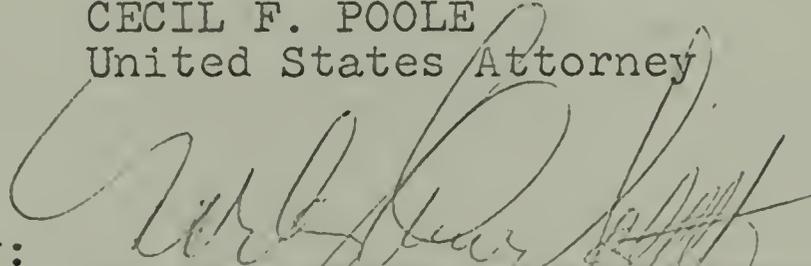
and pursuing a course of conduct in this country
which he thought might make him persona non grata
at home --

It is respectfully submitted that the
decision of the Special Inquiry Officer and the Board
of Immigration Appeals should be sustained.

Respectfully submitted,

CECIL F. POOLE
United States Attorney

By:

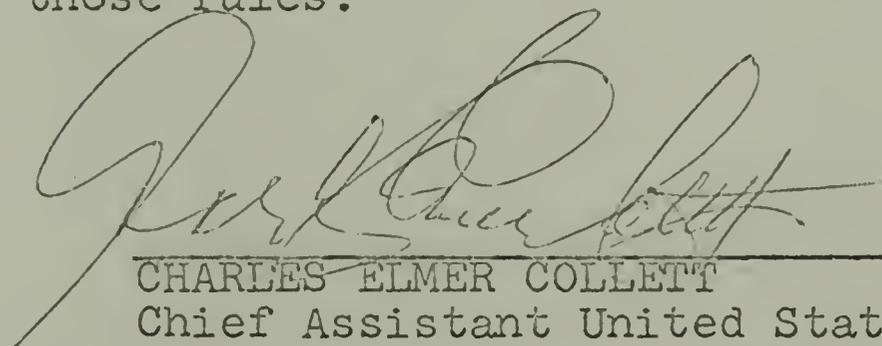

CHARLES ELMER COLLETT
Chief Assistant United States Attorney

Attorneys for Respondent

DATED: November 9, 1967.

CERTIFICATE

I certify that, in connection with the preparation of this brief, I have examined Rules 18, 19 and 39 of the United States Court of Appeals for the Ninth Circuit, and that, in my opinion, the foregoing brief is in full compliance with those rules.

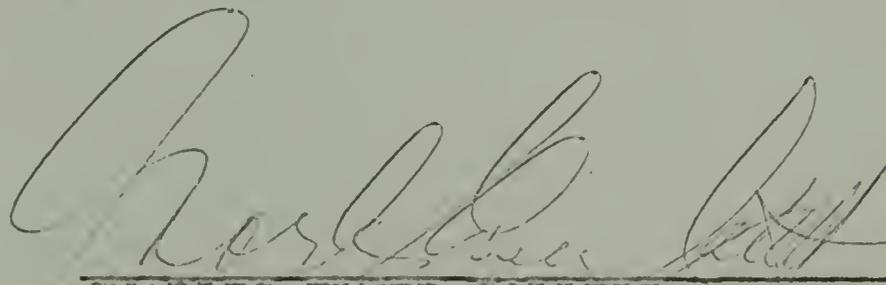
A handwritten signature in cursive script, appearing to read "Charles Elmer Collett", is written over a horizontal line.

CHARLES ELMER COLLETT
Chief Assistant United States Attorney

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that a copy of the foregoing Brief for Respondent was served upon petitioner by depositing the same in the United States mail at the Main Post Office, Seventh and Mission Streets, San Francisco, California, addressed to the Attorneys for the Petitioner,

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